IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 390 of 1993

with

CRIMINAL APPEAL No 410 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RUPSINH DALPATSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR NITIN M AMIN for the appellants.

MR. Y.F. MEHTA, A.P.P. for the respondents

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

Date of decision: 11/12/96

ORAL JUDGEMENT (per N.J. Pandya, J)

1. All the 8 accused -appellants were facing trial in Sessions Case No. 110 of 1991 in the court of learned Additional Sessions Judge of Ahmedabad (Rural) at

Mirzapur. The incident is said to have occurred on 24.4.1991 at about 8.45 p.m. in village Lavad of Dehgam taluka, District Ahmedabad. As originally indicated the incident happened near the house of the complainant Jitendrasinh. Accused No. 8 and his companion came armed with weapons like stick, dharia, iron rod, DANTI also known as dharia and assaulted the prosecution witnesses including the complainant and in the process caused death of Kesarisinh and Javansinh Chatursinh. Remaining witnesses received injuries. This would naturally mean that the complainant Jitendrasingh, Balusingh, Tirthsinh being injured in the same were also eye witnesses of the same. Charge therefore came to be framed under Sections 147, 148, 149, 302, 323, 337 all of IPC.

2 At the end of the trial the learned Additional Sessions Judge by judgement dated 4.2.1993 was pleased to hold all the accused guilty of offences under Section 147, 148 and substantive offences under Section 323 and 302 read with Section 149.

3. For offences under Section 147 and 148 sentences awarded are 6 months R.I. and one year R.I. with fine of Rs. 100/- and in default 15 days R.I. and Rs. 200/and in default one month R.I. respectively.

4. For offences under Section 323 sentence awarded is R.I. for 3 months with fine of Rs. 50/- and in default R. I. for 7 days to each of the accused.

5. For the main offence of murder under Section 302 the sentence awarded is R.I. for life with fine of Rs. 500/- and in default R.I. for 3 months. All substantive sentences are ordered to run concurrently.

6. Now it is an admitted position and has been brought out in the deposition of the complainant and other witnesses that they are facing trial in cross case arising out of this very incident. Complainant PW 3 Exh. 32 in cross examination in para 10 at page 237 of the paper book has clearly admitted as such. Of the 8 accused, accused No. 1, 2 and 3 have received injuries. No doubt they are simple injuries and they are said to have been injured by Balusinh and also deceased Javansinh Chatursinh as well as Kesarisinh. The injuries are said to have been caused by sticks.

7. Another significant fact is that though the complaint at Exh. 70 and the charge indicate that the incident happened near the house of the complainant but

in deposition of the complainant at Exh. 32 at page 231 in the very first line he has shifted the scene of incident by about 1000 to 1500 feet from his house in an open area known as Holichowk.

8. It is therefore clear that there has been a fight between two groups and in the process some of the participants of both the sides have received injuries and no doubt, two persons lost their lives. Of the two persons who died in the incident, so far as Javansinh Chatursinh is concerned he is said to have been given not stick blow as one would understand ordinarily the effect of use of stick but what is referred is as "thosa" that means using the stick together with a vigorous push as if an inanimate object is being pushed by stick. However, he had only two minor injuries and the death could not be related to it. Dr. Ratindra Hasmukh of Ahmedabad hospital in his deposition at Exh. 49 has clearly deposed that the cause of death by this action could not be found out. It therefore seems to be homicidal death.

9. Now in relation to the question of death of Kesarisinh Javansinh it has been more than abundantly clear and specified that he had received vital injuries on his head as many as 3 and they are directly attributed to accused No. 5. The weapon used by him is referred as "DANTI" ordinarily which means a rake having teeth like protrusion on one side and a flat surface on the other side. It is nobody's case that reverse side of the same is used. However, in the description of the weapon seized as muddamal "DANTI" is referred to as a sharp cutting instrument having length of about 9 inches with a width of more than 1 cm. This would mean roughly it had a length of 22.5 cm. The injuries are clearly established by very doctor to be corresponding to a weapon like this and hence the implication of accused No. 5 with respect to the cause of death of Kesarisinh is clearly made out.

10. The learned trial judge was faced with the situation as to whether for the act of one, rest of the accused would be answerable or not. In para 19 (at page 547 of the paper book) of his judgement and going little earlier to that from para 16 (at page 541 of paper book) the discussion on this aspect is to be found. The learned trial judge has disbelieved the theory of self-defence because the attempt on part of the accused before the trial court was to make out a case of only 3 assailants were answerable and rest of the accused were falsely implicated. The learned trial judge has disbelieved this and on this score no serious point is

raised before us.

11. However, in an admitted position there being a cross fight between two groups, accused side received injuries. Merely because there are more than 5 persons it cannot straightway be said that there is an unlawful assembly. Attack clearly started with the complainant and unless therefore the object of unlawful assembly is said to causing death of Kesarisinh, in a straight fight between two groups if one of the persons loses life, rest of the participants in the fight cannot be made answerable.

12. As is expected being in his companion the witnesses have pleaded ignorance about the injury to the accused side while admitting they are facing trial. They have pleaded innocence with regard to the alleged involvement of that another incident.

13. In this background if case is evaluated it is obvious that Section 149 of IPC cannot be attracted. Once this is understood in that light the conviction of remaining accused other than accused No. 5 for offence under Section 302 read with Section 149 cannot be sustained.

14. At this juncture we will be dealing with the submission of the accused No. 5 with regard to the conviction and in the alternative, if at all the court comes to the conclusion that accused No. 5 is responsible for death of both Kesarisinh and Javansinh Chatursinh then also it would not be a case under Section 302 of I.P.C. but it would be a case of 304 of I.P.C. For the reasons stated above, accused No. 5 is convicted under Section 304 Part I and his sentence for life is reduced to that of 10 years imprisonment. He has been in jail from the date of the incident and considering the period of incarceration as an undertrial prisoner and the sentence he has undergone so far, the remaining period of sentence shall be computed on that basis under this order.

15. The appeal of accused No. 5 therefore is partly allowed. His conviction order under Section 302 of I.P.C. is set aside. He now stands convicted under Section 304 Part I of the I.P.C. and sentenced to 10 years R.I. Appeal of the other accused with regard to conviction under Section 302 read with Section 149 of I.P.C. is allowed. They are ordered to be set at liberty if not required for any other purpose. Rest of the order of the trial court remains as it is.

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